IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

-

WRIT PETITION NO : 5920 of 1994

Between:

S. Kondanda Ramaiah, S/o. S.Venkata Rangaiah,
R/o. Flat No. 7, Kalyani Apartments, IV Road, RTC Colony,
Vijayawada.

..... PETITIONER

AND

1 The Secretary, Salar Jung Museum Board and Director, Salar Jung Museum, Hyderabad.
2 The Secretary to Govt. of A.P., General Administration (General) Department, A.P.
Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction to the1st respondent, to fix and pay the final pension & pensionary benefits on the basis of Combined service rendered by me under the respondents 2 and 1 respectively from 4-2-59 to 27-2-63 and from 28-2-63 to 31-101991 m herein with all consequential and attendant benefits including arrears of pension, DCRG commuted Value of Pension, encashing of leave and other pensionary benefits etc., arising out of combined service, along with interest at 12% per annum on the belated payment from 1.11.1991.

Counsel for the Petitioner: MR.P.GOVINDA RAJULU

Counsel for the Respondent No.1: NONE PRESENT

Counsel for 2nd respondent: G.P. FOR GAD.

The Court made the following:

ORAL ORDER:

In this Writ Petition a retired employee of Sarlarjung Museum seeks a direction from this Court that his service from 4.2.1959 to 27.2.1963 rendered with the 2nd respondent be also reckoned for the purpose of computation of his pensionary benefits and for revision in fixation of pension.

2. The facts as noted in the affidavit filed in support of the Writ Petition are that the petitioner joined as Lower Division Clerk with the 2nd respondent with effect from 4.2.1959. He worked temporarily as Upper Division Clerk from 17.4.1962 to 31.5.1962 and continued thereafter to work as Lower Division Clerk up to 27.2.1963. Pursuant to his name being sponsored by the Employment Exchange, the petitioner was relieved from his duties by the 2nd respondent on 27.2.1963 and he joined duty with the 1st respondent on 28.2.1963. He worked as LDC with the 1st respondent from 28.2.1963 to 31.8.1965, was promoted as UDC from 1.9.1965, and as Selection Grade UDC from 4.11.1981 and as Office Superintendent from 25.1.1990. On attaining the age of superannuation, he retired from the service of the 1st respondent as Office Superintendent on 31.10.1991.

3. It is the case of the petitioner that he had taken permission from the 2nd respondent for registering his name with the Employment Exchange for seeking better avenues of appointment, that had informed the 2nd respondent about his selection as Lower Division Clerk in the 1st respondent Office and that he had tendered his resignation and requested the 2nd respondent to relieve him from duties to enable him to join duty with the 1st respondent. Consequent thereto, the 2nd respondent is said to have relieved the petitioner on 17.2.1963 to enable him to join duty with the 1st respondent. The petitioner, placing reliance on the Government of India O.M. dated 29.8.1984 and GO.Ms.No.135, Finance and Planning (FW.Pen.I) Department, dated 19.5.1987 issued by the Government of Andhra Pradesh contends that since Salarjung Museum is an autonomous body created by an Act of Parliament, his earlier service from February, 1959 to

February, 1963 with the General Administration Department of the Government of Andhra Pradesh is required to be taken into account for purpose of fixation of his pensionary benefits. He refers to the proceedings issued by the Administrative-cum-Accounts Officer of the Salarjung Museum (1st respondent) to the Deputy Secretary, General Administration Department (2nd respondent), vide letter bearing No.Admn/91-750, dated 28.10.1991/11.11.1991, wherein the 1st respondent requested the 2nd respondent to give their consent to accept the pension liability that would accrue to the petitioner in the event of counting his past service from 4.2.1959 to 27.2.1963. It is clear from the said letter dated 28.10.1991/11.11.1991 that reckoning the petitioner's past service from 4.2.1959 to 27.2.1963 would result in the 2nd respondent accepting the pension liability that would accrue in favour of the petitioner. The petitioner relies on a judgment of this Court in Writ Petition No.9428 of 1991, dated 13.3.1992 and the judgment of the Supreme Court in R.L.MARWAHA vs. UNION OF INDIA[1] in support of his contention that his past service, from February, 1959 till February, 1963 rendered with the 2nd respondent, is liable to be taken into account for determination of his pensionary benefits.

4. Paragraph 6 of Government of India O.M. dated 29.8.1984, which was given effect to in GO.Ms.No.135, dated 19.5.1987 reads as under:

> "These orders will be applicable only where the transfer of the employee from one organization to another was/is with the consent of the organization under which he was serving earlier, including cases where the individual had secured employment directly on his own volition provided he had applied through proper channel/with proper permission of the administrative authority concerned".

It is clear from the aforesaid paragraph that the order in OM dated 29.8.1984 would be applicable only where the transfer of an employee from one organization to another was with the consent of the organization under which he was serving earlier.

5. The question which would, therefore, fall for consideration is as to whether the petitioner had joined the 1st respondent-organisation with the consent of the 2nd respondent.

6. The contention of the petitioner in this regard is denied in paragraph 2 of the counter-affidavit filed by the 1st respondent, wherein a reference is made to letter No.1490/OP.IV/A2/94-2, dated 7.11.1994 issued by the 2nd respondent clarifying that the petitioner did not take permission for registering his name in the Employment Exchange for seeking better avenues. It is the specific averment of the petitioner, in paragraph 2 of the reply affidavit, that he had applied for an Experience Certificate to register his name with the Employment Exchange, that the 2nd respondent issued the said Certificate and that based on the Experience Certificate issued by the 2nd respondent, the Employment Exchange had registered his name for better avenues and had sponsored his name for regular appointment as an LDC with the 1st respondent. A copy of the said Service Certificate is also enclosed as part of the material papers. The service certificate merely states that the petitioner had worked in the General Administration Department as LDC/UDC during the following period:

Lower Division Clerk ….. 4.2.1959 to 16.4.1962

Upper Division Clerk … 17.4.1962 to 31.5.1962

Lower Division Clerk … 1.6.1962 to 27.2.1963

This Service Certificate was issued by the Assistant Secretary to Government, General Administration (O.P-IV) Department on 27.2.1963. The Service Certificate makes no reference to the petitioner's registering his name with the Employment Exchange nor are the reasons why the Service Certificate was issued indicated therein. As such the petitioner's contention that the service certificate was issued only to enable him to register his name with the Employment Exchange cannot be accepted.

7. The petitioner also refers to a letter dated 27.2.1963 issued by the 2nd respondent relieving him from duties with effect from 27.2.1963 so as to enable him to take up appointment as LDC in the 1st respondent-Salarjung Museum, Hyderabad. Relying on the said letter, the petitioner contends that the very fact that he was relieved from the 2nd respondent office to enable him to join the 1st respondent-organisation is itself proof that prior permission was accorded by the 2nd respondent for his joining the services of the 1st respondent. I am afraid

I cannot agree. The said letter dated 27.2.1963, relieving the petitioner from the services of the General Administration Department to enable him to join the 1st respondent-Salarjung Museum, does not amount to permission being given by the 2nd respondent to the petitioner to join the services of the 1st respondent.

8. In "T.Panduranga Chary vs. The Secretary, Salarjung Museum Board and Director, Salarjung Museum and another" (judgment in Writ Petition No.9428 of 1991, dated 13.3.1992), learned single Judge of this Court, while granting directions to the respondents to take the petitioner's previous service into consideration for calculation of pension, recorded a finding that the petitioner therein had joined service of Salarjung Museum with proper permission of the Regional Provident Fund Commissioner. This finding recorded in Writ Petition No.9428 of 1991 satisfies the requirements of para 6 of the Office Memorandum dated 29.8.1984. In the absence of any evidence being produced to establish that he had joined the 1st respondent-organisation with the permission of the 2nd respondent, the petitioner herein is not entitled for the benefits either under Office Memorandum dated 29.8.1984 or GO.Ms.No.135, dated 19.5.1987.

9. In R.L.Marwaha case (supra 1) the Supreme Court held that the classification of pensioners, working in Government/autonomous bodies, into two classes merely on the basis of the date of retirement i.e., those who retired subsequent to and those who retired prior to the date of the issuance of the order was irrational and arbitrary. While it is true that the 2nd respondent's initial objection, for considering the case of the petitioner, was on the ground that GO.Ms.No.135, dated 19.5.1987 specifies that the said GO will have retrospective effect only from 7.2.1986, it is, however, clear from the counter-affidavit of the 1st respondent that the main reason for denying the petitioner the benefit of his previous service was because the petitioner had not taken permission of the 2nd respondent for registering his name with the Employment Exchange nor did he satisfy the requirement of paragraph 6 of the Office Memorandum dated 29.8.1984, his not having obtained permission of the 2nd respondent for seeking employment with the 1st respondent. The petitioner is, therefore, not entitled for the benefits either under the Office Memorandum dated 29.8.1984 or under GO.Ms.No.135, dated 19.5.1987 for reckoning his

previous service from February, 1959 to February, 1963 for the purpose of determining his pensionary benefits.

10. The petitioner, at paragraph 3 of the affidavit filed in support of the Writ Petition, states that for the period he was in the service of the 2nd respondent from 4.2.1959 to 27.2.1963 i.e., 4 years 24 days he was not paid any terminal benefits for that period. While this specific averment is not denied by the 1st respondent in its counter affidavit, it is not clear as to what are the terminal benefits which the petitioner was entitled for the period of 4 years 24days. The petitioner is at liberty to submit a representation to the 2nd respondent giving details of the terminal benefits, which he is entitled for the period from 4.2.1959 to 27.2.1963, i.e., 4 years 24 days and on submission of such a representation, the 2nd respondent is directed to pass appropriate orders thereon within a period of two (02) months thereafter and communicate its decision to the petitioner.

11. The Writ Petition is dismissed subject to the aforesaid observations. No costs.

20.6.2005

SSR

To

1 The Secretary, Salar Jung Museum Board and Director, Salar Jung Museum, Hyderabad.
2 The Secretary to Govt. of A.P., General Administration (General) Department, A.P.
Secretariat, Hyderabad.

3 2 CCs to G.P. for GAD., High Court of A.P. Hyderabad. (OUT)

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